Document:-
A/CN.4/SR.509

Summary record of the 509th meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1959 , **vol. I**

54. He suggested that article 6 might be referred to the Drafting Committee for examination in the light of the discussion.

It was so agreed.

ARTICLE 7

55. Mr. ZOUREK, Special Rapporteur, introducing article 7, said that its object was to codify existing practice. The exequatur was the document whereby the State of residence granted formal recognition to a person sent to that State as a consul. The form of the exequatur was regulated entirely by the legislation of the State of residence. The forms in which it could be granted were described in the commentary. He emphasized the fact that, in the article, the term "exequatur" was used to describe any kind of formal permission to exercise consular functions in the territory of the State of residence granted by that State to a foreign consul. Since provisional recognition could be accorded to the consul pending the delivery in due form of the exequatur and since consular functions could also be exercised *ad interim*, the article opened with a reference to articles 9 and 11, which dealt, respectively, with provisional recognition and *ad interim* functions. He drew attention to paragraph 2 of the commentary on article 10 adding that the granting of an exequatur was usually published in official gazettes.

56. In conclusion, he said that the expression "consular representatives" should be replaced by the word "consuls".

57. Mr. VERDROSS said that article 7 seemed to be at variance with the Special Rapporteur's fundamental thesis that the establishment of diplomatic relations implied the establishment of consular relations. If a diplomatic mission could include a consular department, the latter could clearly carry out such normal functions as the issuing of visas, which were governed by the domestic legislation of the sending State, without an exequatur. The exequatur was only required for specifically consular activities, such as the protection of nationals by appearing before the local authorities, or the exercise of some administrative and judicial functions that were governed by the legislation of the State of residence.

58. Mr. SANDSTRÖM said he had no objection to the substance of article 7, but considered that it should take into account the fact that an exequatur could take a different form, as in the case of the provision contained in the Consular Convention of 1952 between the United Kingdom and Sweden.

59. Commenting on the form of the article, he considered that it would be more consistent with the Special Rapporteur's intention, and clearer, to give pride of place to the second sentence, which should be followed—in a second paragraph—by the content of article 10. The remainder of article 7 could then form a third paragraph or a separate article.

60. Mr. ZOUREK, Special Rapporteur, replying to Mr. Verdross, said that article 7 was not open to misconstruction because it clearly related solely to heads of consular offices, and an exequatur was obviously not required in cases where consular functions were performed by a section of a diplomatic mission. Even where, in exceptional cases, the sending State asked for exequaturs for one or more of its officials in charge of consular matters within a diplomatic mission, its object in so doing was to ensure that its consular representatives would have the right to enter into direct relations with the local authorities or to exercise activities which would necessarily involve dealings with the local authorities.

61. Mr. AMADO said that the query had not been fully answered. For example, it was Brazil's practice to apply for an exequatur when an official in a diplomatic mission exercised consular functions which were entirely different from normal diplomatic work.

62. Mr. ZOUREK, Special Rapporteur, thought that, if discussion of that point was still considered necessary, it should take place in connexion with article 1, paragraph 2, which had been deferred. He again emphasized the fact that diplomatic missions required no permission to exercise normal consular functions, unless they wished to make direct contact with the local authorities of the State to which they were accredited. So far as it was known, international usage did not require the head of the consular section of a diplomatic mission to obtain an exequatur before entering upon his duties; he continued to be a member of the diplomatic mission and worked under the orders and responsibility of the head of the mission. The grant of an exequatur to such an official, in the very few cases in which it had been accorded or requested, meant that the person concerned was authorized to enter into direct relations with the local authorities in the manner determined by the State of residence; but it could in no way be held to be a pre-condition for the exercise of consular functions by a diplomatic mission. The distinction was an important one, and it would be valuable to obtain information on present practice from Governments.

63. Mr. MATINE-DAFTARY said that the Special Rapporteur had not answered the question raised by Mr. Verdross whether, for the purpose of functions governed solely by the domestic legislation of the sending State, such as the issue of visas, the officer concerned, if serving in the diplomatic mission, needed an exequatur.

The meeting rose at 1 p.m.

509th MEETING

Friday, 5 June 1959, at 9.45 a.m.

Chairman: Sir Gerald FITZMAURICE

Consular intercourse and immunities (A/CN.4/108, A/CN.4/L.79, A/CN.4/L.80, A/CN.4/L.82) (*continued*)

[Agenda item 2]

DRAFT PROVISIONAL ARTICLES ON CONSULAR INTERCOURSE AND IMMUNITIES (A/CN.4/108, PART II) (*continued*)

1. The CHAIRMAN suggested that before resuming discussion on article 7, the Commission might wish to give some thought to the general question of the relationship between the draft on consular intercourse and immunities and the draft on diplomatic intercourse and immunities adopted at the tenth session. The former text had been prepared by the Special Rapporteur before the adoption of the latter, and certain differences of presentation were largely fortuitous.

2. He thought it would be desirable to harmonize the texts where the subject matter was substantially similar and to explain in the commentary in what respects and for what reasons seemingly comparable pro-

visions differed. For example, article 8 of the draft on consular intercourse provided that a State did not have to give reasons for refusing an exequatur, whereas article 8 of the other draft contained no such provision.

3. Mr. ZOUREK, Special Rapporteur, agreed that, in so far as the status of diplomatic and consular missions was substantially the same, the two texts should be as close to each other as possible. Where the status and functions differed, the provisions would differ, of course; the divergences could be explained in the commentary. The parallel must not, however, be carried too far. Whenever the Commission decided that the solution proposed in the draft on diplomatic intercourse and immunities could be further improved, it must not hesitate to adopt such improvement in its draft articles on consular intercourse and immunities. His second report would, moreover, contain some supplementary articles corresponding to the provisions in the draft on diplomatic intercourse.

4. In reply to a question by Mr. FRANÇOIS, the CHAIRMAN said that, as the General Assembly had not reached a decision on the final form of the draft on diplomatic intercourse, there would still be an opportunity to suggest improvements to that draft.

5. Mr. PADILLA NERVO, referring to the example mentioned by the Chairman, said that article 8 in the two drafts related to entirely different situations: that the text on diplomatic intercourse concerned the declaration as *persona non grata* of a person already accepted, whereas the other related to the refusal of the exequatur before the admission of the person concerned.

6. The CHAIRMAN said that nevertheless some commentary was necessary to explain why even article 4 of the draft on diplomatic intercourse and immunities was silent on the question whether the receiving State had to give reasons for refusing its *agrément*.

ARTICLE 7 (*continued*)*

7. Mr. EDMONDS said that article 7 should not be so detailed as to become excessively rigid and difficult to apply. The Special Rapporteur's apparent intention that only heads of consular offices should need the exequatur seemed inconsistent with his original text of article 4.

8. Referring to the Special Rapporteur's commentary on the form of the exequatur, he said it was for the Government of the State of residence to decide what form the "assent" should take, and on that point the Harvard Law School draft, which had been cited at the previous meeting (see 508th meeting, para. 7), seemed admirably clear and free of ambiguity.

9. Mr. YOKOTA said that, despite the assurance in the commentary that the term "exequatur" as used in article 7 covered any document whereby the State of residence authorized the exercise of consular functions, the article as it stood was open to a narrower interpretation. To forestall such an interpretation, he suggested the words "or other forms of authorization" at the end of the second sentence.

10. He said that in Japan the practice was that a formal exequatur was granted by the Emperor in cases where the consular commission had been issued by the head of the sending State. In cases where the commission had been issued by the Minister of Foreign Affairs of the sending State, the authorization took the form of a formal letter of authorization signed by the Japanese Minister of Foreign Affairs.

11. Mr. MATINE-DAFTARY urged the Commission not to split hairs. The exequatur was a classical institution which must be preserved since the exercise of consular functions in some degree touched upon the sovereignty of the State of residence.

12. Mr. TUNKIN found article 7 generally acceptable but agreed that, although the term "exequatur" should be maintained, some flexibility was necessary in the second sentence because there were other forms of expressing consent. He suggested that the word "normally" should be inserted after the words "Such assent is".

13. Mr. PAL supported Mr. Tunkin's amendment.

14. Mr. LIANG, Secretary to the Commission, said that articles 9 and 11 were supplementary to article 7; they neither derogated from it nor constituted any means of recognizing foreign consuls, as the Special Rapporteur stated in paragraph 8 of the commentary. He therefore thought it might be advisable to omit the opening phrase "Without prejudice to the provisions of articles 9 and 11".

15. Mr. ALFARO said the substance of article 7 was acceptable except for the qualifying phrase stating that it related to persons "appointed heads of consular offices", a phrase which apparently excluded subordinate consular officers. The passage might be misconstrued to mean that subordinate consular officers could exercise consular functions without the consent of the State of residence.

16. The CHAIRMAN suggested that, as a precaution against such a possible misinterpretation, the first sentence of paragraph 10 of the commentary might with advantage be transferred to the article itself.

17. Mr. SANDSTRÖM said he was not convinced that paragraph 10 of the commentary in fact reflected existing practice. It appeared, for instance, from the Consular Convention signed between the United Kingdom and Sweden in 1952, which had already been cited, that an exequatur was required in respect of any consular officer, not only heads of consular offices.

18. Mr. YOKOTA said that in Japan an exequatur issued to the person appointed head of a consular office did not automatically cover his subordinate officers; the appointment of the latter had to be reported to the Ministry of Foreign Affairs so that it could send an official letter authorizing them to perform their functions.

19. Mr. PAL drew attention to a fundamental difference between the two drafts in dealing with the question of appointment of heads of posts and other officers. Article 6 of the draft on diplomatic intercourse and immunities did not stipulate that the *agrément* of the receiving State was required for the appointment of members of a diplomatic mission as distinct from its head. He thought it would be desirable to insert in the draft on consular intercourse also a separate article concerning subordinate members of consular offices along the lines indicated in article 6 of the draft on diplomatic intercourse and immunities.

20. Mr. ZOUREK, Special Rapporteur, replying to the comments made, said that the rigidity for which article 7 had been criticized was more apparent than real. The interpretation depended on the meaning attached to the term "exequatur", and the commentary stated explicitly that as used in the article it covered all forms of authorization by the State of residence. The Drafting Committee should be able to devise an acceptable formula; he thought Mr. Tunkin's amendment (see para. 12 above) perfectly satisfactory. If

* Resumed from the 508th meeting.

the article was amended as suggested by Mr. Tunkin and if a clear explanation was given in the commentary, nobody could doubt that the form of the exequatur was entirely a matter to be regulated by the State of residence.

21. Article 7 as it stood did not preclude the State of residence from requiring consular officers other than heads of offices to obtain an exequatur for the purpose of exercising their functions. However, he agreed with Mr. Pal that it would be desirable to insert a special article concerning subordinate staff analogous to article 6 in the draft on diplomatic intercourse and immunities. With reference to the Chairman's suggestion (see para. 16 above) he said he would prefer the substance of the first sentence in paragraph 10 of the commentary to appear in a separate article rather than in article 7. In reply to Mr. Sandström, who had questioned the generality of the practice described in that sentence, he said that it was somewhat difficult to obtain information concerning the practice of States on a given point. He hoped that the observations of Governments would provide fuller particulars. As far as he could judge at the moment, it was the exception rather than the rule to require an exequatur for the assistants of the head of a consular office.

22. He had not included a definition of the exequatur in the belief that it was a familiar institution, but he had no objection to including a definition.

23. He could not accept the Secretary's suggestion because something should be said in article 7 to indicate that the grant of the exequatur did not constitute the only means of conferring on a foreign consul the recognition required in all cases for the exercise of consular functions.

24. In conclusion he said that the Drafting Committee should find it quite easy to prepare a generally acceptable text of article 7. He emphasized that he would prefer article 7 to apply solely to persons appointed heads of consular offices; a separate article should deal with their assistants and staff.

25. The CHAIRMAN added that a further reason in favour of separating the provisions concerning heads of consular offices from those concerning consular staff was that in the draft on diplomatic intercourse the provisions concerning heads of diplomatic missions were separated from those concerning mission staff.

26. Mr. PADILLA NERVO agreed that there should be a separate article on consular staff. However, the problem of the definition of consular staff would arise and he thought that a distinction between different types of staff should be drawn in the article on definitions. He referred to the definitions clause, in particular article 2, paragraphs (6) and (7), of the Consular Convention between the United Kingdom and Sweden, 1952. Those provisions seemed to indicate that the generic term "consular staff" was insufficient and that a distinction should be made between various members of that staff.

27. The CHAIRMAN suggested that article 7 should be referred to the Drafting Committee, which would take into account the comments made in debate.

It was so agreed.

ARTICLE 8

28. The CHAIRMAN drew attention to Mr. Scelle's amendment (A/CN.4/L.82)—similar to Mr. Sandström's amendment—proposing the deletion of the words "without giving reasons for its refusal".

29. Mr. ZOUREK, Special Rapporteur, said that the article had been inserted in the draft because, unlike the case of diplomatic agents, there was not as a general rule any *agréation* procedure for consuls. It was a universally admitted rule of international law that every State had the right to refuse to admit as a consul a person whom it regarded as undesirable. That right flowed from the sovereignty of States and was confirmed by the practice of States cited in the commentary on the article. In his opinion, the only question arising out of the article which might be controversial was whether States should communicate their reasons for refusal of the exequatur. On that point he referred the members of the Commission to paragraph 3 of the commentary on the article. In view of the variations in practice in the matter of stating reasons for the refusal of the exequatur, the draft could not lay down an obligation to give reasons for the refusal. The conventions which required communication of the reasons for the refusal were an exception. Moreover, article 4 of the draft on diplomatic intercourse and immunities did not mention such an obligation.

30. With regard to Mr. Sandström's amendment, he thought that the phrase in question should be retained, because it corresponded to current international practice. But if the majority of the Commission so decided, the phrase could be deleted, since the diversity of practice was in any case explained in the commentary. He wished to point out, however, that the phrase he proposed did not prevent any State from giving reasons for its refusal if it so wished.

31. With regard to the "unless" clause in the article, he said that a receiving State which had given its *agrément* to a consul could hardly refuse the exequatur when the sending State subsequently asked for it for the person accepted. If any valid reasons arose later, it might declare the officer concerned *persona non grata;* however, such a situation would not come within the terms of article 8.

32. The CHAIRMAN asked whether the article applied only to heads of office or to all consular staff. In the latter case, the provision would be much more stringent for consular staff than was the corresponding provision for the staff of diplomatic missions.

33. Mr. ZOUREK, Special Rapporteur, said that the article related only to heads of office. He was prepared to draft a special article relating to consular staff and to state explicitly in article 8 that only heads of office were meant.

34. Mr. SANDSTRÖM thought that article 8 should be considered together with article 17 (*Withdrawal of the exequatur*), since the two articles dealt with very similar matters which it would be desirable to discuss at the same time.

35. Mr. ZOUREK, Special Rapporteur, thought that Mr. Sandström's suggestion had some merit. It should be borne in mind, however, that the articles related to two entirely different situations. Article 8 related to the original admission of a person to the exercise of consular functions, while article 17 covered the case of a consul who had received an exequatur, which was withdrawn later. The withdrawal was more serious than the simple refusal of the exequatur.

36. The CHAIRMAN thought that the two articles dealt with quite separate subjects and should preferably

not be discussed together. Moreover, article 17 established more favourable conditions for consular officers than those applied to diplomatic agents in the draft on diplomatic intercourse and immunities since, under article 8 (*Persons declared* persona non grata) of the latter draft, no limitations were placed on the rights of the receiving State, whereas article 17 of the draft on consular intercourse and immunities qualified that State's rights. However, members might if they wished refer to article 17 while discussing article 8.

37. Mr. EDMONDS thought that the title of article 8 might be changed to "Refusal to admit".

38. With regard to the "unless" clause, he believed that it was unusual to hold any negotiations in advance with regard to the appointment of consular officers. It might be inadvisable for the Commission to imply that such negotiations were desirable or necessary, particularly since the omission of the phrase would not mean that negotiations should never be held.

39. Mr. SCELLE considered that article 8 was unnecessary and that it contained an unacceptable provision. It was unnecessary because it merely expressed in negative terms the substance of article 7; the essential idea in the two articles was the same, since a State had the right both to grant and to refuse the exequatur.

40. The unacceptable provision of the article was the phrase "without giving reasons for its refusal". It was stated in paragraph 1 of the commentary that the right to refuse the exequatur was implicit in the sovereignty of the State. To state that thesis of absolute sovereignty in the Commission's draft would constitute a retrograde step in the evolution of international law. It might be admissible to say that a State might or might not give reasons for refusal, but to imply that it should not do so was clearly wrong. Moreover, it was not enough to argue that government consultations would take place before the decision was taken; it would be seen from paragraph 3 of the commentary that the practice in the matter varied widely. Even if the prevailing practice was not to give reasons for the refusal of the exequatur, the Commission's task was not merely to register practice, but also to advance the principles of international law.

41. Mr. YOKOTA noted that the Special Rapporteur was not wholly opposed to the idea of omitting the last phrase of article 8. He recalled that a similar question had arisen during the discussion of the corresponding provision of the draft on diplomatic intercourse and immunities and that the Commission had decided to omit such a phrase. It was obviously desirable in some cases to give reasons for the refusal of the exequatur, since, if those reasons were sound, the sending State would accept the refusal with good grace. The Special Rapporteur had said that the usual practice was not to give reasons; and yet in three out of the four cases referred to in paragraph 1 of the commentary, the receiving States had given reasons for the refusal. Although those examples were not exhaustive, they led to the assumption that in practice reasons were often given. Accordingly, he supported Mr. Sandström's amendment.

42. The Special Rapporteur had said that article 8 related only to the admission of heads of consular offices. Since the receiving State also had the right to refuse to admit other consular officers, that question should be dealt with somewhere in the draft, preferably in a separate article.

43. Mr. SANDSTRÖM said that he had submitted his amendment mainly because no such provision as "without giving reasons for its refusal" appeared in the draft on diplomatic intercourse and immunities. On further consideration, however, he had come to the same conclusion as Mr. Scelle, namely, that the article as a whole was unnecessary. The principal rule was already implied in article 7, of which article 8 was merely a negative form, and the restatement of the rule in different terms in a separate article was justified only by a possible exception to it. Such an exception was suggested in the "unless" clause, but he did not consider that the exception was a real one. Even if the *agrément* had been given in advance, the receiving State was entitled to withdraw it, just as it could take the still more drastic step of withdrawing an exequatur already given. Accordingly, the article did not reflect actual practice nor was it desirable as a contribution to the progressive development of international law. The proposition in the last phrase might have been another possible reason for the inclusion of the article, to show the difference from the proposition in article 17, paragraph 2. But the question was whether paragraph 2 of that article should be retained. He considered that it should be deleted, and, consequently, that article 8 had no *raison d'être*.

44. Mr. PAL said he could see no basis for retaining the final phrase, "without giving reasons for its refusal". He recalled that the question of giving reasons for declaring a diplomatic agent *persona non grata* had been discussed in connexion with article 8 of the draft articles on diplomatic intercourse and immunities, and that it had been decided not to mention the matter in the text of the article. However, the position had been made clear by the following statement in paragraph (6) of the commentary to that article: "The fact that the draft does not say whether or not the receiving State is obliged to give reasons for its decision to declare *persona non grata* a person proposed or appointed, should be interpreted as meaning that this question is left to the discretion of the receiving State."[1] There was no reason why in the present draft the question should not be dealt with in a similar manner.

45. The "unless" clause at the beginning of the article was difficult to understand. It might refer to various aspects of the possible situation in which a particular consul had been approved by a receiving State before being admitted to the exercise of consular functions on its territory. It seemed to him, however, that all possible situations were fully covered by articles 5, 6 and 7 in conjunction with article 17. Therefore, the clause in question was unnecessary.

46. What remained of article 8 after the elimination of the "unless" clause and of the final phrase would then be the statement that a State was entitled to refuse to admit a person appointed head of a consular office to the exercise of his functions on its territory; but article 7 already provided that such persons could not take up their duties until they had obtained the assent of the State of residence. Article 8 would serve some purpose only if it contained its final phrase. Without that phrase, it lost its significance.

47. Mr. VERDROSS said that article 8 had been correctly described as a negative formulation of article 7. Surely, the only way in which a State could express its refusal to admit a consular officer to the exercise of his functions was not to grant the exequatur. Article 8

[1] See *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9*, chap. III, p. 13.

should therefore be omitted and, if desired, some words might be added to article 7 which would make it clear that the intended State of residence had the right to withhold the exequatur.

48. With reference to the "unless" clause he said that consular relations rested not only on the mutual confidence of the States concerned, but on their continuing mutual confidence. If an *agrément* had been given in advance, it was not necessarily implied that the exequatur would be granted.

49. Mr. BARTOŠ agreed with Mr. Scelle's thesis as elaborated by Mr. Pal (see para. 44 above). He also agreed with Mr. Verdross, except that he would suggest that the reference to the right of a State to refuse the exequatur should be placed in the commentary.

50. Mr. ERIM observed that the *agrément* was mentioned in the draft for the first time in article 8. There had been no reference to it in article 7. He did not think that the case of the refusal of the exequatur to a consular officer in respect of whom no *agrément* had been given could be dealt with in the same way as the case in which there had been an *agrément*. He agreed with Mr. Verdross that the giving of an *agrément* did not necessarily mean that the exequatur would be granted, but if it was refused the reasons should be given. The *agrément* would have been given only after due investigation and, once it had been given, the refusal to grant the exequatur should be explained in the same manner as the withdrawal of the exequatur, as provided for in article 17, paragraph 2.

51. Mr. ZOUREK, Special Rapporteur, referring to Mr. Edmonds's statement (see paras. 37 and 38 above), said that the *agréation* procedure was not common but some consular conventions provided for that procedure. It was admittedly exceptional but it was a practice which, he felt, should be referred to in the text—perhaps with the use of some more general term than *agrément*—in order to enable Governments to comment upon it. However, he would be prepared, if necessary, to withdraw the "unless" clause and to deal with the question in the commentary.

52. On the other hand, he could not agree to the elimination from the text of a reference to the right of the State of residence to refuse to admit a person to the exercise of consular functions on its territory. It had been argued that that was a negative formulation of the rule in article 7. That might be true, but it was one of the most widely accepted formulations of the rule; many national laws and international conventions established the right to refuse the exequatur. A relevant provision should be included in the codification, if only by the amendment of article 7.

53. He agreed with Mr. Yokota (see para. 42 above) that there should be a provision concerning the rights of the State of residence with respect to consular staff other than the head of the consular office. There would be an article concerning the staff of the consular office and such a provision could be inserted in that article.

54. He agreed that the final phrase, "without giving reasons for its refusal", could be omitted.

55. Mr. AMADO said that he had not been convinced by the Special Rapporteur that the draft should contain a reference to the *agréation* procedure. He had never heard of the procedure being applied in the case of consuls and he noted that in paragraph 2 of the Special Rapporteur's commentary nothing specific was cited in support of the view that it existed. If, as the commentary implied, it had been imposed on the defeated States after the First World War, that was another reason why it should not find a place in the draft. It had been agreed that the final phrase concerning the giving of reasons should be omitted and he associated himself with Mr. Pal's view that without that phrase article 8 was unnecessary.

56. Mr. PAL said that after listening to the Special Rapporteur he was still of the opinion that article 8 would not serve any useful purpose. While it had had some meaning in the context of the Special Rapporteur's draft articles—article 1, paragraph 1, which had originally provided that every State had the right to establish consular relations with foreign States—it had lost its significance in view of the changes that had been introduced in the earlier articles, particularly since paragraph 1 of article 1 had been deleted.

57. The CHAIRMAN noted that there was general agreement that the final phrase of article 8 should be omitted and, in his personal view, the article would be pointless without it. Moreover, without that phrase, article 8 would in effect say that if a State had given its *agrément* in advance, it could not refuse to grant the exequatur. That was patently not true, although, admittedly, in such a case a State would not refuse the exequatur except for grave reasons. However, such a case would be so rare that he did not think that a special provision covering it was required in the text of the draft. He hoped that the Special Rapporteur could agree. The fact that the "unless" clause was omitted would not mean that States were not free to apply the *agréation* procedure, and the Special Rapporteur's point could be brought out in the commentary.

58. He also hoped that the Special Rapporteur could agree to the omission of article 8 as a whole. If he felt that a provision concerning the right of the State of residence to refuse the exequatur was essential, he (the Chairman) suggested it might suffice to add at the end of article 7 the sentence: "However, no State shall be bound to grant the exequatur."

59. Mr. ZOUREK, Special Rapporteur, said in reply to Mr. Amado that there were conventions which provided for the *agréation* procedure and there would probably be similar cases in the future. The practice should be encouraged. The case was exceptional, as he had said, and it was in order to take that exceptional case into account that he had included the "unless" clause. However, as it had caused such a division in the Commission, he was prepared to withdraw it, though Governments should be asked to comment on the point.

60. Accordingly, he was prepared to accept the Chairman's suggestion as the basis for referring article 8 to the Drafting Committee.

61. Mr. SANDSTRÖM thought that some members still considered it inadvisable to amend article 7 in the sense indicated. He could accept the Chairman's suggestion (see para. 58 above) on the understanding that the solution envisaged would be re-examined when the report of the Drafting Committee was considered.

The Chairman's suggestion was agreed to subject to the Special Rapporteur's and Mr. Sandström's reservations.

The meeting rose at 12.55 p.m.